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ADMINISTRATIVE LAW

VOLUME II

Freya Kristjanson & Leslie McIntosh

Spring 2011

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ADMINISTRATIVE LAW
SPRING SEMESTER 2011

Adjunct Professors Freya Kristjanson and Leslie McIntosh

Office Hours:

Freya Kristjanson
Cavalluzzo, Hayes, Shilton, McIntyre & Cornish LLP
474 Bathurst Street, Suite 300
By appointment (416-964-5520); and
By e-mail: fkristjanson@cavalluzzo.com

Leslie McIntosh
Crown Law Office - Civil
720 Bay Street, 8th Floor
By appointment (416-326-4148); and
By email: leslie.mcintosh@ontario.ca

Class Hours: Tuesdays and Thursdays, 8:30am-10:30am

Overview

Administrative law is the study of how governments and administrative tribunals may affect the rights and interests of individuals and groups, as well as the role of the courts in superintending administrative action. Administrative law issues arise in a diverse range of settings including immigration and refugee law, labour law, health law, human rights law, environmental law, securities, banking and competition regulation, professional discipline, and decision-making in universities, hospitals and municipalities. The course will consider the rules and principles applicable to various kinds of decision-makers including government ministers, officials, administrative boards and tribunals, agencies and commissions. Specific topics include: the rule of law, procedural fairness considerations that govern investigation, rule-making, and adjudication by administrative agencies, the right to a hearing, independence and impartiality, the standard of review of administrative decisions, remedies for abuse of discretion, and the application of the *Charter* and constitutional principles in the administrative realm. Throughout the course the overriding questions will be: How is the public interest to be determined? How should the protection of individual and group rights and interests be balanced against the goals asserted by the administrative decision-maker?

Texts

There is case book, Kristjanson & McIntosh, *Administrative Law, 2011*. The syllabus sets out the cases. Specific readings will be assigned in class or by Blackboard postings.

Blackboard

There will be a Blackboard page for this course. Readings will be assigned and hand-outs may be posted on Blackboard.

Recommended Reading

For those seeking additional readings, the following sources are recommended:

- Guy Regimbald,, *Canadian Administrative Law* (Toronto: Lexis Nexis Canada Inc., 2008, 1st ed.)
- Gus Van Harten, Gerald Heckman and David J. Mullan, eds., *Administrative Law: Cases, Text and Materials* (Toronto: Emond Montgomery Publications, 2010, 6th ed.)
- Colleen Flood and Lorne Sossin, eds., *Administrative Law in Context* (Toronto: Emond Montgomery Publications Ltd., 2008)
- MaCaulay & Sprague, *Practice and Procedure before Tribunals* (Toronto: Carswell, 1988) (Looseleaf ed.)
- Sara Blake, *Administrative Law in Canada*, (Toronto: LexisNexis, 2006, 4th ed.)

Evaluation

There will be a final, 3-hour open-book examination (100%).

Course Outline

All page references are to the 2011 Administrative Law Case Book (CB), by volume number (CB I, CB II, CB III). Blackboard readings will be assigned separately.

CLASS #1 - TUESDAY, JANUARY 4

Introduction to Administrative Law

(no assigned readings)

CLASS #2 - THURSDAY, JANUARY 6

I. **Overview: Foundations of the Modern Administrative State**

(a) Mullan (6th ed.), pp. 3-35, "The Administrative State and the Rule of Law", CB I, p. 1

(b) Rule of Law - *Dunsmuir v. New Brunswick*, 2008 SCC 9, CB I, p 35

CLASS #3 - TUESDAY, JANUARY 11

II. Overview: The Duty of Fairness – The Modern Expression

(a) Common Law

1. *Baker v. Canada (Minister of Citizenship and Immigration)*, [1999] 2 S.C.R. 817, 174 D.L.R. (4th) 193, CB I, p. 77

(b) Charter

1. *Suresh v. Canada (Minister of Citizenship and Immigration)*, (2002), 208 D.L.R. (4th) 1, paras. 113-128, CB I, p. 98

2. *R. v. Conway*, 2010 SCC 22, CB I, p. 105

CLASS #4 - THURSDAY, JANUARY 13

III. The Duty of Fairness

A. Evolution of the Duty of Fairness

(a) *Calgary Power Ltd. v. Copithorne*, [1959] S.C.R. 24, 16 D.L.R. (2d) 241, CB I, p. 120

(b) *Nicholson v. Haldimand-Norfolk* (1979), 88 D.L.R. 671 (S.C.C.), CB I, p. 128

(c) *Martineau v. Matsqui Inmate Disciplinary Board*, [1980] 1 S.C.R. 602, CB I, p. 135

CLASS #5 - TUESDAY, JANUARY 18

B. Sources of Procedural Fairness - *Statutory Powers Procedure Act*

(a) *Statutory Powers Procedure Act*, R.S.O. 1990, c.22, CB I, p. 146

CLASS #6 - THURSDAY, JANUARY 20

C. Threshold – When Does the Duty Arise?

(a) Rights, Privileges and Interests – Guy Regimbald, *Canadian Administrative Law* (2008, Lexis Nexis Canada Inc., 1st ed.), pp. 237-239, CB I, p. 169

(b) No Fairness Duty: General Policy /Legislative Decision-Making

1. *Canada (Attorney General) v. Inuit Tapirisat of Canada*, [1980] 2 S.C.R. 735, 115 D.L.R. (3d) 1 (Fed.) , CB I, p. 172

2. Mullan (6th ed) excerpt, pp. 122-156, CB I, p. 182

(c) Investigating/Advising/Recommending

1. *Canada (Attorney General) v. Canada (Commission of Inquiry on the Blood System- Krever Commission),* [1997] 3 S.C.R. 440, 151 D.L.R. (4th) 1 (Fed.), para. 1, 7-9, 30-31, 34, 55-57, CB I, p. 217

CLASS #7 - TUESDAY, JANUARY 25

1. Legitimate Expectations

(a) Guy Regimbald, *Canadian Administrative Law* (2008, Lexis Nexis Canada Inc., 1st ed.), pp.288-298, CB I, p. 228

(b) *Khadr v. Canada (A.G.)*, 2006 F.C.J. No. 888 (F.C.A.), CB I., p. 239

D. Procedural Rights – Elements of the Duty of Fairness

1. Hearing Stage – Oral Hearings, Public Hearings

(a) *Khan v. University of Ottawa* (1997), 34 O.R. (3d) 535 (C.A.), CB I, p. 251

(b) *Xwave Solutions Inc. v. Canada (Public Works & Government Services)*, (2003) 5 Admin. L.R. (4th) 280 (FCA) , CB I, p. 263

(c) *Charkaoui v. Canada (Citizenship and Immigration)*, [2007] 1 S.C.R. 350, ("*Charkaoui #1*) paras. 53-64, CB I, p. 270

CLASS #8 - THURSDAY JANUARY 27

2. Notice and Scope of Hearing:

(a) *Canada (CRTC) v. CTV Television Network*, [1982] 1 S.C.R. 530, CB II, p. 1

(a) *Supermarchés Jean Labrecque Inc. v. Flaman*d, [1987] 2 S.C.R. 219, CB II, p. 4

(a) *Telecommunications Workers Union v. Canada (Radio-television and Telecommunications Commission)*, [1995] 2 S.C.R. 781, 125 D.L.R. (4th) 471, CB II, p. 10

(b) *Canadian Pacific Railway Co. v. Vancouver (City)*, [2006] 1 S.C.R. 227, 2006 SCC 5, CB II, p. 15

(c) *Henderson v. College of Physicians and Surgeons of Ontario,* [2003] O.J. No. 2213 (C.A.), CB II., p. 27

(d) *SPPA*, ss. 6, 7 and 8 (See SPPA, CB I, p. 146)

3. Disclosure and Discovery

(a) *Deloitte & Touche LLP v. Ontario (Securities Commission)*, [2003] 2 S.C.R. 713; 232 D.L.R. (4th) 1, CB II, p. 34

(b) *Pritchard v. Ontario (Human Rights Commission)*, [2004] 1 S.C.R. 809, 238 D.L.R. (4th) 1, CB II, p. 41

(c) *Ontario Human Rights Commission v. Dofasco* (2001), 57 O.R. (3d) 693 (C.A.), CB II, p. 44

(d) *May v. Ferndale Institution*, [2005] 3 S.C.R., 809, paras. 89-120, CB II., p. 54

(e) *Charkaoui v. Canada (Citizenship and Immigration)*, 2008 SCC 38 ("*Charkaoui* #2"), CB II, p. 60

CLASS #9 - TUESDAY, FEBRUARY 1

4. Right to Counsel, Cross-Examination, Delay and Adjournments

(a) Guy Regimbald,, *Canadian Administrative Law* (Toronto: Lexis Nexis Canada Inc., 2008, 1st ed.), pp. 266-275 and 282-288, CB II, p. 82

(b) Mullan, pp. 456-462, CB II, p. 99 (*Innisfil/County of Strathcona/Re B)*

(c) *Khan v. University of Ottawa* (1997), 34 O.R. (3d) 535 (C.A.), CB I, p.

(d) Law Society of Upper Canada v. Ibginosun, (2009) 96 O.R. (3d) 198 (C.A.), CB II, p. 103

5. Decision on the Record and Reasons

(a) *Kane v. University of British Columbia*, [1980] 1 S.C.R. 1105, 110 D.L.R. (3d) 311, CB II, p. 115

(b) *Congrégation des témoins de Jéhovah de St-Jérôme-Lafontaine v. Lafontaine (Village)*, [2004] 2 S.C.R. 650, 2004 SCC 48, CB II, p. 121

(c) *Clifford v. Ontario Municipal Employees Retirement System*, 2009 ONCA 670 (CanLII), CB II, p. 129

(d) *Law Society of Upper Canada v. Neinstein*, 2010 ONCA 193 (CanLII), CB II, p. 135

CLASS #10 - THURSDAY, FEBRUARY 3

E. Statutes and Regulations

(a) *Ontario Disability Support Program Act*, S.O. 1997, c.25, Schedule B and O.Reg.222/98, as amended and O.Reg.562/05, as amended (excerpts), CB II, p. 150

(b) Social Benefits Tribunal, Practice Directions, Excerpts, CB II, p. 227

CLASS #11 - TUESDAY, FEBRUARY 8

F. Policies and Rules

(a) Mullan, pp. 675-679 & 684, CB II, p. 184

(b) *Capital Cities v. CRTC,* [1978] 2 S.C.R. 141, CB II, p. 197

(c) *Ainsley Financial Corp. v. Ontario Securities Commission* (1994), 21 O.R. (3d) 104 (C.A.) , CB II, p. 203

(d) *Thamotharem v. Canada (Minister of Citizenship & Immigration),* 2007 FCA 198 (CanLII) , 60 Admin. L.R. (4th) 247, CB II, p. 207

(e) Social Benefits Tribunal, Practice Directions, Excerpts, CB II, p. 227

CLASS #12 - THURSDAY, FEBRUARY 10

G. Bias

1. Impartiality – Personal Interest, Prejudgment, Attitudinal Bias

(a) *R. v. Valente* (1985), 24 D.L.R. (4th) 161 (S.C.C.), CB II, p. 229

(b) *Old St. Boniface Residents Assn. v. Winnipeg (City)* (1990), 75 D.L.R. (4th) 385 (S.C.C.), CB II, p. 246

(c) *Newfoundland Telephone Co. v. Newfoundland (Board of Commissioners of Public Utilities)*, [1992] 1 S.C.R. 623, 89 D.L.R. (4th) 289, CB II, p. 254

(d) *Chretien v. Canada (Ex-Commissioner, Commission of Inquiry into the Sponsorship Program and Advertising Activities)*, 2008 FC 802, aff'd 2010 FCA 283, CB I, p. 263

(e) *Baker,* pp. 220-223, para. 45-50, CB I, p. 77

CLASS #13 - TUESDAY FEBRUARY 15 –

2. Tribunal Impartiality and Independence

(a) *International Woodworkers of America, Local 2-69 v. Consolidated- Bathurst Packaging Ltd.*, [1990] 1 S.C.R. 282, 68 D.L.R. (4th) 524, CB II, p. 286

(b) *C.U.P.E. v. Minister of Labour,* [2003] 1 S.C.R. 539, CB II, p. 303

CLASS #14 - THURSDAY FEBRUARY 17

3. Structural Independence

(a) *Canadian Pacific Ltd. v. Matsqui Indian Band,* [1995] 1 S.C.R. 3, 122 D.L.R. (4th) 129, CB II, p. 329

(b) *Ocean Port Hotel Ltd. v. British Columbia (Liquor Control and Licensing Branch, General Manager)*, [2001] 2 S.C.R. 781, 204 D.L.R. (4th) 33, CB II, p. 349

**********READING WEEK**********

CLASS #15 - TUESDAY, MARCH 1

IV. Statutory Appeals and Judicial Review

1. Overview

(a) *ODSPA*, s.31, CB II, p. 162

(b) *Crevier v. Quebec (Attorney General)*, [1981] 2 S.C.R. 220, 127 D.L.R. (3d) 1, CB III, p. 1

(c) *Judicial Review Procedure Act*, R.S.O. 1990, c.J.1, as amended, CB III, p. 4

CLASS #16 - THURSDAY, MARCH 3

2. Evolution of standard of review

(a) Mullan excerpt, pp. 797-819, CB III, p. 8

(b) Guy Regimbald, *Canadian Administrative Law* (Toronto: Lexis Nexis Canada Inc., 2008,1st ed.), pp. 377-395 and 400-416, CB III, p. 31

CLASS #17 - TUESDAY, MARCH 8

3. Modern Standard of Review

(a) *Dunsmuir v. New Brunswick*, 2008 SCC 9, CB I, p. 35

(b) *Canada (Citizenship and Immigration) v. Khosa,* Blackboard Posting

CLASS #18 - THURSDAY, MARCH 10

Contemporary Issues in Judicial Review – Blackboard Posting

CLASS #19 - TUESDAY, MARCH 15

4. Parties and Standing

(a) *Northwestern Utilities Ltd. v. City of Edmonton*, [1979] 1 S.C.R. 684, pp. 706-711, CB III, p. 68

(b) *Ontario (Children's Lawyer) v. Ontario (Information and Privacy Commissioner)* (2005), 75 O.R. (3d) 309, pp. 315-324 (C.A.), CB III, p. 79

(c) *Canadian Council of Churches v. Canada (Minister of Employment & Immigration)*, [1992] 1 S.C.R. 236, 88 D.L.R. (4th) 193, pp. 197-204, CB III, p. 88

(d) *Sutcliffe v. Ontario (Minister of the Environment)* (2004), 69 O.R. (3d) 257 (C.A.), CB III, p. 97

CLASS #20 - THURSDAY, MARCH 17

5. Discretion and Justiciability

(a) Mullan, pp. 951-953, CB III, p. 103

(b) *Roncarelli v. Duplessis*, [1959] S.C.R. 121, pp. 130-145, CB III, p. 106

(c) *Multi-Malls Inc. v. Ontario (Minister of Transport & Communications)* (1976), 14 O.R. (2d) 49, 73 D.L.R. (3d) 18 (C.A.) , CB III, p. 117

(d) *Operation Dismantle Inc. v. R.*, [1985] 1 S.C.R. 441, 18 D.L.R. (4th) 481 at pp. 481-494, CB III, p. 127

CLASS #21 - TUESDAY, MARCH 22

A. Tribunal Jurisdiction - Constitution, Charter and Human Rights Codes

(a) *Nova Scotia (Worker's Compensation Board) v. Martin*, [2003] 2 S.C.R. 504; 231 D.L.R. (4th) 385, CB III, p. 148

(b) *Tranchemontagne v. Ontario (Director, Disability Support Program)*, [2006] 1 S.C.R. 513; 266 D.L.R. (4th) 287, CB III, p. 163

(c) *R. v. Conway*, 2010 SCC 22, CB I, p. 105

CLASS #22 - THURSDAY, MARCH 24

6. Collateral Attacks

(a) *R. v. Consolidated Maybrun Mines Ltd.*, [1998] 1 S.C.R. 706, 158 D.L.R. (3d) 193, pp. 206-214, CB III, p. 179

7. Exhaustion of Alternative Remedies/Prematurity

(b) *Canadian Pacific Ltd. v. Matsqui Indian Band*, pp. 149-151, para. 54-60, CB II, p. 329

(c) *Harelkin v. University of Regina*, [1979] 2 S.C.R. 561, pp. 587-594, CB III, p. 192

CLASS #23 - TUESDAY, MARCH 29

8. Remedies

(a) *Seaway Trust Co. v. Ontario* (1983), 41 O.R. (2d) 501 (Div. Ct.); 41 O.R. (2d) 532 (C.A.), CB III, p. 213

(b) *Doucet-Boudreau v. Nova Scotia (Minister of Education)*, [2003] 3 S.C.R. 3, 232 D.L.R. (4th) 577, pp. 597-606, CB III, p. 221

(c) *Mt. Sinai Hospital v. Quebec (Minister of Health and Social Services)*, [2001] 2 S.C.R. 281, 200 D.L.R. (4th) 193, pp. 223-242, CB III, p. 22

CLASS #24 - THURSDAY, MARCH 31

Procedural Fairness and Appeals/Judicial Review– summary and application

CLASS #25 TUESDAY APRIL 5

Exam Preparation Class

CLASS #26 THURSDAY APRIL 7 – QUESTION AND ANSWER SESSION